repaid to the person having and establishing a lawful right thereto, with interest at the rate of three *per centum per annum*. In a recent Massachusetts case a savings bank which had been paying four *per centum per annum* to its depositors contended that the statute was unconstitutional, since it impaired the obligation of contracts; but the contention was overruled and the statute upheld. *Attorney-General* v. *Provident Inst. for Savings*, 86 N. E. 912 (Mass.). The case seems difficult to support on principle. A statute that says that money owed by A to B shall not be owed by A, but shall be owed by C, impairs the obligation of a contract and deprives a man of his property without due process of law.[7] And since the contract is changed without the parties' consent it is immaterial that something just as good is substituted in its place.[8] It is further to be noted that the purpose of this statute differs from that of the Pennsylvania statute in that the latter is designed to protect the rights of the absentee's wife and children, his creditors, and next of kin, whereas the former is not designed to protect the heirs or creditors of the absentee but to be of pecuniary profit to the State. Its operation, furthermore, not only does not protect them, but is a positive injury; for it substitutes for a four *per centum* interest claim against the savings bank a three *per centum* claim against the state. And though it can not be denied that the state is entitled by escheat to the property of a person dying without heirs or devisees and that it has power to fix a reasonable statute of limitations, after which no claim to abandoned property shall be recognized, yet the Massachusetts statute is not of this sort, since it does not purport to bar the claim of the absentee. The real purpose of the statute is the pecuniary profit of the state, and though that is a worthy object, it is not one for which the police power can be exercised, especially when it impairs the obligation of a contract.

RIGHTS OF CREDITORS IN CORPORATE ASSETS. — It has long been a favorite doctrine with many American courts that the capital stock and other assets of a corporation constitute a "trust fund" for the benefit of its creditors.[1] This has been given as the basis of the right of creditors to compel stockholders to pay in full for stock issued to them as a bonus, or for less than the par value, under an agreement with the corporation that nothing more should be payable.[2] But it is now becoming generally recognized that this right, so far as it exists, rests on grounds of fraud.[3] The doctrine has also been invoked in order to set aside a distribution of the corporate assets to the stockholders when debts are left unpaid,[4] and to avoid a conveyance of the corporate assets to another corporation that is not a purchaser in good faith.[5] But these two cases can be rested on the ordinary doctrines of fraudulent conveyances:[6] it is unnecessary to resort to a fictitious trust.

As to what constitutes a fraudulent conveyance by a corporation, the test is the same as in the case of natural persons.[7] Accordingly, a corporation

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7 Bank of Louisville *v.* Board of Trustees, 83 Ky. 219.
8 Dartmouth College *v.* Woodward, 4 Wheat. (U. S.) 518, 662.

1 Woods *v.* Dummer, 3 Mason (U. S.) 308. See 9 HARV. L. REV. 481.
2 Scovill *v.* Thayer, 105 U. S. 143. See 22 HARV. L. REV. 319.
3 Hospes *v.* Car Co., 48 Minn. 174.
4 Woods *v.* Dummer, *supra*. See Angle *v.* Ry., 151 U. S. 1.
5 R. R. *v.* Howard, 7 Wall. (U. S.) 392.
6 See Goddard *v.* Importing Co., 9 Col. App. 306.
7 See Hamilton *v.* Quarry Co., 106 Wis. 352.

on the eve of insolvency may not give away its assets.[8] And, like a natural person, in the absence of statutory provisions, it may give a preference to some of its creditors;[9] although the opposite result has been reached under the trust-fund theory.[10] So also a sale with intent to defraud or hinder creditors is voidable, as where the transferee is a new corporation whose stockholders are the same as those of the selling corporation.[11] But a sale in the ordinary course of business to a purchaser for value without notice cannot be set aside,[12] even though it be a sale of all the corporate assets.[13] It was, however, held in a recent case that if the corporate assets were sold in return for stock of the purchasing corporation issued to the sole shareholder of the selling corporation individually, and by him pledged to individual creditors, the creditors may charge the assets so sold with an equitable lien in the hands of the purchasing corporation. *Luedecke* v. *Des Moines Cabinet Co.*, 118 N. W. 456 (Ia.). The court repudiates the trust-fund doctrine, which has been given as the basis for similar decisions,[14] and properly rests the result on the ground that the transfer was a fraudulent conveyance, and the purchasing corporation not a *bona fide* purchaser. It is unnecessary to find any actual intent to defraud or delay the creditors, since the issue of the stock to the individual shareholder necessarily tends to deprive the corporation of its ability to pay its debts. The transaction is in effect a distribution of the corporate assets while debts are still unpaid, and the purchasing corporation is coöperating in the fraud. And although the creditor could follow the proceeds of the sale in the hands of the stockholder, that right is lost by a sale or pledge to a purchaser for value and without notice, and is clearly an inadequate remedy.[15] A result similar to that of the principal case has been reached where the buying corporation gives no consideration except a promise to assume the debts of the selling corporation.[16]

REGULATION OF INTERSTATE COMMERCE BY THE COURTS PENDING INVESTIGATION BY THE INTERSTATE COMMERCE COMMISSION. — Prior to legislation by Congress interstate commerce was regulated under the common law, enforced in the state or federal courts.[1] At first the extension of common law principles to a subject in federal control was disputed,[2] but a decision of the Supreme Court settled this question.[3] The common law required public carriers to charge a reasonable rate; and a recovery in damages for excessive charges was allowed the shipper.[4] Consequently, when damages were inadequate, an injunction would be issued to prevent the establishment

[8] Morgan County *v.* Allen, 103 U. S. 498.
[9] Farwell Co. *v.* Sweetzer, 51 Pac. 1012 (Col.). See 11 HARV. L. REV. 550.
[10] Olney *v.* Land Co., 16 R. I. 597.
[11] Central Ry. *v.* Paul, 93 Fed. 878.
[12] See Nat. Bank *v.* Texas Co., 74 Tex. 421.
[13] Warfield *v.* Marshall Canning Co., 72 Ia. 666.
[14] Hurd *v.* Laundry Co., 167 N. Y. 89.
[15] See Hibernia Co. *v.* St. Louis Co., 13 Fed. 516.
[16] Cole *v.* Iron Co., 133 N. Y. 164.

[1] Concerning the concurrent jurisdiction of state and federal courts, see Judson, Interstate Commerce, § 44.
[2] Murray *v.* Chicago & N. W. Ry. Co., 62 Fed. 24. *Contra*, Swift *v.* Philadelphia & Reading Ry. Co., 64 Fed. 59.
[3] Western Union Telegraph Co *v.* Call Publishing Co., 181 U. S. 92.
[4] Murray *v.* Chicago & N. W. Ry. Co., *supra.*